

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOSHUA JERMAINE MCKNIGHT,

Plaintiff,

v.

UNKNOWN PERRY, et al.,

Defendants.

Case No. 2:18-cv-99

HON. JANET T. NEFF

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OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant Perry filed a motion for summary judgment, arguing that Plaintiff failed to properly exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a). Plaintiff filed a motion to produce, seeking an order directing Defendant Perry to identify Unknown Party #1 and Unknown Party #2, who are the other remaining Defendants in this case. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending this Court grant Defendant Perry's motion for summary judgment, deny Plaintiff's motion to produce, and dismiss this case. The matter is presently before the Court on Plaintiff's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court denies the objection and issues this Opinion and Order.

The Magistrate Judge concluded that Plaintiff had not exhausted his claims where Plaintiff's March 3, 2018 Step I grievance was untimely filed and the rejection was upheld at Steps II and III (R&R, ECF No. 31 at PageID.187-188). In his objection to the Report and Recommendation, Plaintiff disagrees that his March 3, 2018 Step I grievance was untimely filed (Pl. Obj., ECF No. 34 at PageID.194). However, Plaintiff's objection does not reveal any factual or legal error in the Magistrate Judge's exhaustion analysis or ultimate conclusion. *See Scott v. Ambani*, 577 F.3d 642, 647 (6th Cir. 2009) (holding that a grievance rejected as untimely during the administrative process is not properly exhausted). Therefore, this Court denies Plaintiff's objection.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves all pending claims, a Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Consistent with the Report and Recommendation, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Plaintiff's Objection (ECF No. 34) is DENIED, and the Report and Recommendation of the Magistrate Judge (ECF No. 31) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Perry's Motion for Summary Judgment (ECF No. 18) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Produce (ECF No. 27) is DENIED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 13, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge